

Exhibit B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

SUSANNA MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiff,

Case No. 18 Civ. 2949 (ARR) (RER)

v.

XOOM ENERGY, LLC and
XOOM ENERGY NEW YORK, LLC

Defendants.

**PROPOSED PLAN FOR NOTICE OF PENDENCY AS A CLASS ACTION /
DECLARATION OF GUILLERMO VARON**

1. I am the Executive Director of Finance and Operations for Arden Claims Service, LLC (“ACS” or the “Administrator”). I submit this Declaration at the request of Class Counsel in connection with the above-captioned action (the “Action”).

2. This Declaration is based upon my personal knowledge and information provided by Class Counsel, my associates, and ACS staff. This Declaration details the proposed plan of notice to the Class defined below (“Plan”) that ACS has proposed to use in this Action. Following a competitive bidding process and input from three separate notice administrators on notice plan design, Class Counsel selected ACS to implement the Plan based on its extensive experience and strong track record of adherence industry best practices.

3. This Plan was designed based on the requirements of Fed. R. Civ. P. 23 and the requirements of constitutional due process, and adopts best practices reflected in the notice plans approved by courts in similar cases. As described below, the Plan provides for direct notice to

Class Members and is supplemented by an informational website and a toll-free hotline where Class Members can obtain answers to their questions.

CLASS DEFINITION AND SIZE

4. The Class, as certified by the Court in its August 31, 2023 order (ECF No. 152), is defined as follows:

All New York XOOM residential or small commercial customers who were charged a variable rate for electricity or natural gas under the operative 2013 XOOM New York variable rate sales contract or its equivalent language at any time from January 1, 2013 through and including the date of judgment.

Excluded from the Class are the officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, and their legal representatives, heirs, successors or assigns and any entity in which they have or have had a controlling interest, all federal, state and local government entities and any judge, justice or judicial officer presiding over this action and the members of their immediate families and judicial staff.

5. Based on discovery to date, Class Counsel estimates that the Class comprises 80,000 to 110,000 members. As discussed herein, under the Plan, Defendants will soon supplement their class-wide data production and provide Class Counsel with a complete and accurate list of Class Members and their contact information.

DIRECT NOTICE

6. The Plan involves issuing direct notice to the Class using the contact information maintained by Defendants in the ordinary course.

7. Based on information provided by counsel for Defendants on September 22, 2023, Class Counsel understands that mailing addresses and email addresses were gathered from Class Members by Defendants and maintained in the ordinary course. Defense counsel likewise represented on September 22 that email addresses are automatically removed from Defendants' files if "multiple bounce-backs are received."

8. Under the Plan, and because Defendants have represented that email addresses were subject to verification in the ordinary course, all Class Members for whom Defendants have an email address will be emailed notice.

9. The email notice will be designed using best practices to avoid common “red flags” that might otherwise cause the recipient’s spam filter to block the notice or identify it as spam. For example, the Administrator will not include the notice as an email attachment because attachments are often interpreted by Internet Service Providers (“ISP”) as spam. Rather, in accordance with industry best practices, the Administrator will provide notice in the body of the email and include electronic links to further information the Class Members can easily access.

10. For any email for which the initial delivery attempt fails or is blocked during initial delivery, the Administrator will take appropriate steps to address any impediments to delivery and issue a second round of email notice to affected Class Members.

11. For the Class Members for whom Defendants’ records do not have email address, the Administrator will issue notice via direct mail postcard. In addition, for any Class Members where emailed notice is determined to be impossible, direct mail notice will be issued to those Class Members as well.

12. If any direct mail is returned as undeliverable, the Administrator will employ best practices, including the use of an advanced address search and/or skip tracing, to determine those Class Members’ correct mailing or forwarding addresses.

13. For any Class Members for whom it is determined that there is no viable email address or physical address, ACS will employ best practices to determine those Class Members’ addresses, including the use of an advanced address search and/or skip tracing.

14. Regarding the notice language, defense counsel represented to Class Counsel on September 22 that in the ordinary course Defendants record whether Class Members prefer communicating in Spanish or English. The Plan thus includes direct notice in both English and Spanish to those Class Members for whom Defendants' records reflect a preference for Spanish. The Administrator will provide for all necessary translations.

15. Based on ACS's experience and defense counsel's claim to Class Counsel on September 22 that "[m]ailing addresses and emails addresses were gathered and maintained for all class members," I reasonably estimate the Plan will result in direct notice being received by approximately 95% of the Class.

OTHER NOTICE METHODS

16. The Administrator will also create and maintain a case-specific informational website where Class Members can easily view key information about this case, review relevant Court documents, and view important dates and deadlines pertinent to exercise their rights as Class Members.

17. The website will be designed to be inviting and user-friendly, reflect accepted best practices, and make it easy for Class Members to find information. For example, the website will be optimized for both desktop and mobile viewing, will have all necessary security certificates, and will have "Frequently Asked Questions" and "Contact Us" pages whereby Class Members can obtain answers to their questions.

18. A toll-free telephone hotline devoted to this case will also be implemented to further apprise Class Members of their rights and options. The toll-free hotline will utilize an interactive voice response ("IVR") system to provide Class Members with responses to frequently asked

questions and allow Class Members to leave a voicemail to request a call back. The hotline will be accessible 24 hours a day, 7 days a week.

19. To assist Class Members that prefer communicating in Spanish, the Administrator will develop and maintain Spanish versions of the website and hotline.

OPT-OUT DEADLINE

20. Class Members will be given 60 days from the initial notice date to exercise their right to exclude themselves from the Class. For any Class Members that are re-issued notice, the opt-out deadline will be extended to reflect the later notice date such that all Class Members will be afforded a 60-day opt-out period.

RELEVANT EXPERIENCE

21. ACS is an experienced class action administrator specializing in consumer, human rights, and employment class action matters. ACS's innovative systems and technology offerings and experienced and dedicated employees enable ACS to provide efficient and secure class action administration solutions. ACS has been selected as notice, claims, and/or settlement administrator in hundreds of high-volume class action cases, involving a wide variety of media, direct and third-party notice plans, data management, claims administration, and settlement fund distribution.

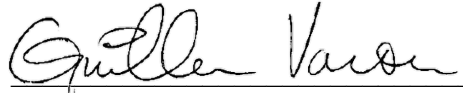
CONCLUSION

22. The Plan will provide full and adequate notice to Class Members and is the best notice that is practicable under the circumstances, is fully compliant with of Fed. R. Civ. P. 23 and provides Class Members due process of law in informing them of their rights.

23. After effectuating the Plan, the Administrator will provide a final report to the Court regarding the Plan's implementation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28th day of September 2023 in Port Washington, New York.


Guillermo Varon